

DECISION



See also Kingbury 119325

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-208319

DATE: August 31, 1982

MATTER OF: Tidewater Metals

DIGEST:

1. A bid that does not include a required bid bond must be rejected as nonresponsive unless only one bid was received or the bond was received late and can be considered under the rules for late bids.
2. Where it is clear from the protester's initial submission that the protest is without legal merit, GAO will resolve the protest without a detailed report from the contracting agency or a requested conference, since neither would serve any useful purpose.

Tidewater Metals protests the Navy Public Works Center's decision not to award a scrap metal, ash collection, and disposal service contract to Tidewater under invitation for bids N62470-82-B-7006. While Tidewater offered the lowest bid, the company failed to include a bid bond as the solicitation required. The Navy therefore rejected the bid as nonresponsive.

We deny the protest summarily.

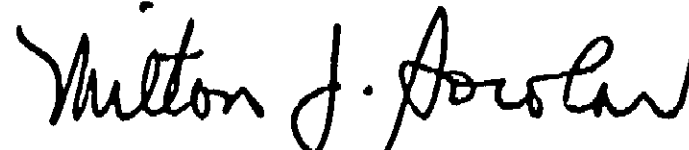
Tidewater argues that the terms of the solicitation only provide that failure to furnish a bid guarantee "may" be cause for rejection. Interpreting this to mean that the requirement for a bid bond may be waived, Tidewater contends that the public interest would be best served if the contracting activity waived the bid bond requirement and accepted Tidewater's low bid.

This argument is without legal merit. We have held that the statement that omission of the bid bond "may" be cause for rejection is as compelling as if more positive language were employed. Consolidated Installations Corp., B-202630, April 20, 1981, 81-1 CPD 301. The word "may" does not indicate that the contracting activity has complete discretion to waive the bid bond requirement. It indicates, instead, that the

bid will not be rejected if either of two exceptions applies. See Schneider Security Agency, Inc., B-206083, March 4, 1982, 82-1 CPD 202. Those exceptions are: (1) where no other bids are received, or (2) where the bond is received late and the situation meets the rules for considering late bids. See Defense Acquisition Regulation § 10-102.5 (1976 ed.).

The Tidewater bid was not the only bid received, and the late bid rules clearly are irrelevant here. Where the noted exceptions are not applicable, the contracting activity may not waive the requirement for a bid bond and the bid must be rejected as nonresponsive. Pacific Consolidated Services, B-204781, March 10, 1982, 82-1 CPD 223. The basic reason why the bid must be rejected, even though it may offer the lowest price (as in this case), is that waiver of the requirement for a bond would make it possible for a bidder to decide at the opening whether or not to have its bid rejected by the simple expedient of not furnishing the bond. Also, waivers would cause undue delays in effecting procurements. Further, the subjective determinations by different contracting officers as to whether waiver is inappropriate in an individual case would create inconsistencies in the treatment of bidders. See Lance Security Patrol, Inc., B-189975, August 15, 1980, 80-2 CPD 124. Since it is clear from Tidewater's initial submission that the protest has no chance of success on the merits, we have resolved the matter without a report from the procuring agency and without the conference requested by Tidewater, since it is clear that neither would serve any useful purpose. See Rapicom, Inc., B-201176.7, January 27, 1982, 82-1 CPD 58.

The protest is summarily denied.



Acting Comptroller General
of the United States